

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael King	Team: Team # 4	CCRB Case #: 200301308	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/15/2003 3:15 PM	Location of Incident: Southwest corner 53rd Street & 3rd Avenue in Manhattan	Precinct: 17	18 Mo. SOL 8/15/2004	EO SOL 8/15/2004	
Date/Time CV Reported Wed, 02/19/2003 8:54 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 02/20/2003 9:42 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Shea	26251	890990	MOUNTED

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Shea	Discourtesy: PO Michael Shea spoke obscenely to an unidentified male victim.	[REDACTED]
B.POM Michael Shea	Force: PO Michael Shea used physical force against an unidentified male victim.	[REDACTED]

Synopsis

This complaint stems from the anti-war rally that took place on February 15th, 2003 at the United Nations headquarters, which received extensive press coverage. As such, the case was determined to be sensitive and placed on the sensitive case list. The complainant in this case – § 87(2)(b) – filed his complaint by sending an email to the nyc.gov website on February 19th, 2003, which then forwarded the complaint to the CCRB for investigation. § 87(2)(b) alleged that PO § 87(2)(b) Shea of the NYPD Mounted Unit (identified by § 87(2)(b) via name, shield number, and during a photographic array conducted on April 14th, 2003) struck an unidentified White male protester on his head while standing in the vicinity of the southwest corner of 53rd Street and 3rd Avenue at approximately 3:15 PM. § 87(2)(b) sister – § 87(2)(b) – also alleged that the same officer spoke discourteously to the unidentified victim prior to hitting him. § 87(2)(b) was unable to identify PO Shea in a photographic array. The investigation was unable to identify the victim of the allegations, as there was no duplicate complaint filed with the CCRB and both § 87(2)(b) and § 87(2)(b) were unable to identify any of the individuals arrested at the corner of 53rd Street and 3rd Avenue as being the victim. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on February 28, 2003 (Enclosure 5-5d). On February 15th, 2003, § 87(2)(b) attempted to attend the anti-war rally located at 49th Street and 1st Avenue. § 87(2)(b) was on his way towards the rally with his girlfriend – § 87(2)(b) (he did not wish to provide her last name) – and made it as far as 53rd Street and 3rd Avenue, where he met his sister, § 87(2)(b). They stood in the middle of 3rd Avenue among numerous other protesters. After standing for approximately 20 minutes, officers in uniform requested that the crowd move on to the sidewalk. After this, approximately 12-20 officers on horseback appeared and dispersed the crowd of protesters onto the sidewalk by moving southbound on the avenue. § 87(2)(b) and his sister moved onto the southwest corner of 53rd Street and 3rd Avenue. After another 20 minutes, some of the protesters returned to the middle of the avenue and the police announced that everyone needed to return to the sidewalks. Once again, the police department announced that everyone needed to clear the street and most of the protesters complied, as officers on foot and mounted officers dispersed the crowd.

§ 87(2)(b) and his sister moved back onto the sidewalk at the southwest corner of 53rd Street and 3rd Avenue and stood about three rows from the sidewalk. At this point, § 87(2)(b) observed a mounted officer by the name of PO “Shea” with shield “26251” (which he obtained by reading it off the officer’s nameplate) ride his horse towards the sidewalk and attempt to grab the musical instruments (maracas) of two unidentified White male protesters who were standing in the front of the crowd. § 87(2)(b) described PO Shea as a White male in his mid 40s to early 50s with “reddish brown” hair and a “brownish” mustache with gray wisps. § 87(2)(b) estimated him to be of medium build and approximately 6’ tall. PO Shea missed grabbing the instruments and the two protesters continued to shake their instruments. PO Shea backed up and then approached the same two males a second time, during which he swiped at the male protester wearing a red hat, striking him on the top left side of his head with an open hand, “sort of like a slap.” § 87(2)(b) described the victim as wearing a red hat with light brown/blonde hair, 6’1” and of thin build; he did not know the identity of this person and had never seen him prior to this incident. § 87(2)(b) was three rows back and to the left of the victim when this incident occurred, estimating that he was within 8-10 feet of the incident. § 87(2)(b) did not observe the victim being arrested. PO Shea then moved back into the tightly packed crowd on the street. § 87(2)(b) his sister, and girlfriend then left the scene. § 87(2)(b) sustained no injuries and was not arrested. He rejected mediation.

Results of Investigation

Upon receiving the case, the undersigned conducted a query for any officers named “Shea” with shield number “26251” assigned to the Mounted Unit via the CCRB’s officer identification database, identifying PO § 87(2)(b) Shea of the mounted unit. A request for PO Shea’s department photograph was sent, which was received on April 7th, 2003. The arrest reports for males at this location were compiled

(Enclosure 7-7v) and requests were sent for the photographs of these arrests at the intersection of 53rd Street and 3rd Avenue in the vicinity and time of this incident in order to show to the complainant and witness for the sake of possibly identifying the male victim. The arrest photographs were obtained on May 15th, 2003.

Officer Photographic Array – § 87(2)(b)

§ 87(2)(b) was shown a photographic array at the CCRB on April 14th, 2003 (Enclosure 5e-5l). Initially, § 87(2)(b) ruled out the officer depicted in photograph six as the subject officer, though after considering photograph six and photograph two, § 87(2)(b) identified the officer depicted in photograph six as the subject officer. § 87(2)(b) stated that the officer's eyes were what seemed most similar to the subject officer. The officer depicted in photograph six was PO Shea.

Civilian Statement – § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on May 3rd, 2003 (Enclosure 5m-5u). Her statement was fairly consistent with her brother's account with the following differences. § 87(2)(b) specifically recalled PO Shea, whom she described as being a White male with a mustache and a medium build, directing profanity at the crowd such as "what are you fucking gonna do?" § 87(2)(b) described the interaction between PO Shea and the unidentified male, whom she described as a 25-30 years old, tall, thin, brown-haired White male wearing a pink, "sort of flashy party hat," as one in which the two argued back and forth with each other. She did not remember the civilian saying anything "outrageous" to PO Shea, other than "get the animals off the horses." After several verbal exchanges, PO Shea then struck the civilian on the civilian's hat or head. It was not a punch, more of a "bitch slap," as if his head were pushed or shoved backward. The civilian's head moved and the hat tilted to the side. § 87(2)(b) was to the left of the civilian and several people behind him. She did not see the civilian make a physical gesture towards PO Shea prior to the officer striking him. After the civilian was hit, the officer seemed to rein the horse back and moved away. The civilian appeared shocked. § 87(2)(b) did not know the name of the civilian nor had she ever spoken to him before. She did not know if the civilian was arrested.

When shown a photographic array, § 87(2)(b) could not identify PO Shea, nor could she recognize any of the officers depicted.

Civilian Photographic Array – § 87(2)(b) and § 87(2)(b)

A photographic array consisting of photographs of arrested males from the location of this incident within proximity of the time of the incident was shown to § 87(2)(b) and § 87(2)(b) on May 30th, 2003 (Enclosures 5v-5bb and 5cc-5ii, respectively). None of the males depicted were identified as the victim in this incident.

Review of CCRB Protest complaints filed

On June 22nd, 2003, the undersigned researched the list of complaints filed regarding the February 15th, 2003 anti-war demonstration in order to determine if there were any duplicate complaints filed. There were sixteen other complaints filed regarding incidents that occurred at the intersection of 53rd Street and 3rd Avenue, though none of these complaints were duplicates of this incident. Three of the complaints concerned force against unidentified victims (200301211, 1248, and 1311), though none of these complaints were in any way similar to that of § 87(2)(b). In short, § 87(2)(b) and his sister were the only complainants to claim that a Mounted Unit officer struck with his hand an unidentified male protester on the head.

Officer Statement – PO § 87(2)(b) Shea

PO Michael Shea was interviewed at the CCRB on June 10th, 2003 (Enclosure 6-6b). On February 15th, 2003, PO Shea worked as a member of the Mounted Unit's F troop under the supervision of Sgt. Patricia Espinosa. At the start of the day (9 AM), PO Shea and his group were posted at 1st Avenue near the United Nations building south of where the demonstration proper was to take place. The group started moving when there were radio calls requesting them to clear specific areas, though PO Shea did not know

what time they started moving, nor did he know where they went. PO Shea could not account for his whereabouts at the time of this incident (3PM) and he had no knowledge of this incident. He denied getting into shouting matches with civilians or hitting any males wearing pink party hats. PO Shea denied saying, “what are you fucking going to do?” to any of the protesters.

Conclusions and Recommendations

The only fact upon which the primary parties in this matter agree is this: that PO Shea was working as part of the Mounted Unit for the February 15th, 2003 anti-war demonstration detail. § 87(2)(b) and his sister agreed for the most part on what happened, though § 87(2)(b) differentiated her statement by indicating that the subject officer and the unidentified victim verbally sparred with each other. PO Shea had no recall of this incident and did not know his whereabouts at the time of this incident – he had no memo book entries detailing his movement for the day. The investigation was unable to identify the victim in this incident, as there was no duplicate complaints filed regarding this incident and § 87(2)(b) and § 87(2)(b) could not identify a victim during photographic arrays.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation A. PO Michael Shea spoke obscenely to § 87(2)(b) in violation of Patrol Guide Procedure 203-09.

§ 87(2)(b) recalled the subject officer and the unidentified male victim verbally sparring with each other prior to the alleged use of force. § 87(2)(b) specifically recalled the officer yelling, “what the fuck are you gonna do?” and using the word “fuck” regularly in his discourse with the male victim. § 87(2)(b) made no such allegation. PO Shea denied verbally engaging with any members of the crowd on that day and denied knowledge of this incident. The unidentified victim remains that.

Regarding the use of profanity, Patrol Guide Procedure 203-09 directs officers to “be courteous and respectful.” However, there is no strict prohibition against the use of profanity by officers. In their review of cases involving discourtesy, administrative law judges have delineated a set of parameters for the use of profanity. Depending on the circumstances, ALJs have found that officers may resort to the use of profanity in order to “forcefully make a point” (*Police Department v. DiFalco*, OATH Index No. 1623/97 (Dec. 5, 1997)), “to gain compliance with an order or direction” (*Police Department v. Campos*, OATH Index Nos. 640-42/96 (Feb. 5, 1996)), or “in the heat of a highly dangerous situation” (*Police Department v. Iacurto*, OATH Index No. 1064/90 (June 13, 1990)). § 87(2)(g)

[REDACTED]

§ 87(2)(g)

Allegation B. PO Michael Shea used physical force against § 87(2)(b) in violation of Patrol Guide Procedure 203-11.

Both § 87(2)(b) and his sister § 87(2)(b) alleged that an officer named PO “Shea” approached an unidentified White male wearing a red/pink party hat and swiped at and struck the victim’s head. No injury was described and there was no indication that the victim was arrested. § 87(2)(b) identified PO § 87(2)(b) § 87(2)(b) Shea of the mounted unit as the subject officer in a photographic array. PO Shea denied striking at any of the protesters and could not recall any interaction with a White male wearing a red/pink party hat. Based on the statements obtained, it remains unclear whether PO Shea struck an unidentified White male on his head.

Regarding the use of force, Patrol Guide Procedure 203-11 directs officers to “use (the) minimum necessary force” during police incidents. § 87(2)(g)

§ 87(2)(b) ALJs have reviewed the use of force on a case by case basis and in light of the reasonableness and justification of such force in the respective contexts. § 87(2)(g)

§ 87(2)(b) an officer struck a civilian on the back of his head during an incident in which the victim was not arrested (*Police Department v. Mundo*, OATH Index No. 1917/99 (July 26, 1999)), the ALJ found the use of such force, while “relatively minimal” and without injury, was nonetheless gratuitous, as it served no reasonable law enforcement purpose. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: